



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 5796-99

6 December 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 1 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 31 May 1968 for four years at age 17. The record reflects that you completed the "Field Radio Operator" course and were assigned to Vietnam on 14 April 1969. You were advanced to CPL (E-4) on 3 August 1970. Messages in the record indicate that on 25 October 1970 you were diagnosed with an undetermined fever, possibly due to malaria. On 7 November 1970 you were medically evacuated to a naval hospital in Japan. You were discharged from treatment and received orders on 24 December 1970 to return to the United States.

You served without incident until 3 June 1971 when you received nonjudicial punishment (NJP) for violation of a lawful order by allowing unauthorized personnel in the armory while on duty as a sentry, and having alcoholic beverages in the barracks. Punishment imposed consisted of forfeitures of \$50 per month for two months, 60 days of restriction, and a suspended reduction in

rank to LCPL (E-3).

On 16 September 1971 you were convicted by special court-martial of possession of 8.9 grams of marijuana and sale of marijuana. You were sentenced to confinement at hard labor three months, forfeitures of \$127 per month for three months, reduction in rank to PVT (E-1), and a bad conduct discharge. The convening authority approved the sentence but suspended the bad conduct discharge for a period of nine months.

On 16 December 1971, you received a second NJP for absence from your appointed place of duty and two instances of failure to obey a lawful general order. The Navy Court of Military Review affirmed the findings and the sentence of the special court-martial on 8 March 1972.

The record reflects that on 23 June 1972 you were reported UA and remained absent until you surrendered on 13 September 1972. However, on 9 October 1972 you went UA again and remained absent until you were apprehended by civil authorities on 4 February 1973 for public drunkenness. The following day you pled guilty to public drunkenness and were fined \$25 plus court costs. However, you defaulted on the fine and were confined in the county jail until 11 February 1973. You were returned to military jurisdiction on 8 March 1973.

On 27 April 1973 charges for the two periods of UA, from 23 June to 14 September 1972 and 9 October 1972 to 4 February 1973, were referred to a special court-martial.

On 2 May 1973 you requested an undesirable discharge for the good of the service in order to escape trial by court-martial for the two foregoing periods of UA totalling about 200 days. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. A staff judge advocate reviewed the request and found it to be sufficient in law and fact. On 18 May 1973 the discharge authority approved the request and directed an undesirable discharge. You were so discharged on 30 May 1973.

On 29 October 1986, the Naval Discharge Review Board (NDRB) denied your request for recharacterization of your discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors such your youth and immaturity, Vietnam service, and the fact that it has been more than 26 years since you were discharged. The Board noted the issues you presented to NDRB in October 1986 and the contention that given your service in Vietnam you did not deserve an undesirable discharge. The Board concluded that the foregoing factors and

contentions were insufficient to warrant recharacterization of your discharge given your record of two NJPs, a special court-martial conviction, and a misdemeanor conviction by civil authorities. The Board noted that the special court-martial awarded a bad conduct discharge which was suspended for a probationary period of nine months. During that period, you violated your probation on three separate occasions. The first was an NJP in December 1971 and the other two were the two prolonged periods of UA totalling 200 days. Accordingly, the convening authority could have vacated the bad conduct discharge but did not do so. The Board also believed that considerable clemency was extended to you when the request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. You have provided neither probative evidence nor a convincing argument in support of your application. The Board concluded that your discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director